

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SANDRA L. MEDLIN
Claimant

VS.

SOUTHWESTERN BELL TELEPHONE
Respondent
Self-Insured

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Docket No. 244,701

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Nelsonna Potts Barnes' November 19, 1999, preliminary hearing Order.

ISSUES

The Administrative Law Judge denied respondent's request to terminate claimant's temporary total disability benefits and psychological treatment found to be directly related to claimant's work-related bilateral upper-extremity injuries.

On appeal, respondent contends claimant's need for psychological treatment does not arise out of and in the course of claimant's employment with respondent. Also, respondent contends the administrative law judge exceeded her authority when she denied respondent's request to terminate claimant's psychological treatment and temporary total disability benefits.

Conversely, claimant contends that the Administrative Law Judge's preliminary hearing Order should be affirmed. Claimant argues she is entitled to psychological treatment and temporary total disability benefits because her work-related bilateral upper-extremity injuries have aggravated, accelerated, or intensified her pre-existing psychological condition.¹

¹ See *Boutwell v. Domino's Pizza*, 25 Kan. App. 2d 110, Syl. ¶3, 959 P.2d 469, rev. denied ____ Kan. ____ (1998).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

In two previous preliminary hearing orders, the Administrative Law Judge found claimant's repetitive work activities had caused claimant to suffer injuries to her bilateral upper extremities. Claimant was granted medical treatment and temporary total disability benefits for those physical injuries.

In a September 8, 1999, preliminary hearing Order, the Administrative Law Judge also found that claimant's pre-existing psychological condition had worsened as a direct result of her work-related physical injuries. The Administrative Law Judge then granted claimant's request for medical treatment for her psychological condition and temporary total disability benefits.

The Administrative Law Judge's November 19, 1999, preliminary hearing Order, that is the subject of this appeal, denied respondent's request to terminate claimant's psychological treatment and temporary total disability benefits. The Administrative Law Judge found the medical opinions of claimant's treating psychiatrist and therapist more persuasive than the medical opinion of the psychiatrist whom the respondent employed to examine the claimant.

Although stated somewhat differently by the respondent, the Appeals Board finds the first issue raised by the respondent on appeal is whether claimant's pre-existing psychological condition has been aggravated, accelerated, or intensified by her work-related physical injuries. The Appeals Board has held in the past that the issue of whether claimant's psychological problems are directly traceable to his or her work-related physical injury is an issue dealing with the nature and extent of claimant's injuries.² Here, the Appeals Board also finds the issue is one dealing with the nature and extent of claimant's injuries instead of whether claimant suffered an accidental injury arising out of and in the course of the employment. This contention by the respondent does not raise one of the jurisdictional issues listed in K.S.A. 1999 Supp. 44-534a. Thus, the Appeals Board finds, at this juncture of the proceeding, it does not have jurisdiction to review this preliminary issue raised by the respondent.

Furthermore, respondent alleges the Administrative Law Judge exceeded her authority by not granting respondent's request to terminate claimant's psychological treatment and temporary total disability benefits. The preliminary hearing statute specifically gives the Administrative Law Judge authority to grant or deny requests for

² See *Frontado v. Rubbermaid Specialty Products*, WCAB Docket No. 217,058 (Nov. 1999).

medical and temporary total disability compensation.³ The Appeals Board finds, as it has on many other occasions, that the Administrative Law Judge did not exceed her authority in denying respondent's request to terminate claimant's medical treatment and temporary total disability benefits. The Appeals Board does not have jurisdiction to review a preliminary hearing finding in regard to medical or temporary total disability compensation.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that respondent's appeal of Administrative Law Judge Nelsonna Potts Barnes' November 19, 1999, preliminary hearing Order should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

c: David H. Farris, Wichita, KS
Anton C. Andersen, Kansas City, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

³See K.S.A. 1999 Supp. 44-534a.